

TOWN OF TIVERTON  
ZONING BOARD OF REVIEW MINUTES

MARCH 7, 2007

The following petitions were received and were heard by the Tiverton Zoning Board on Wednesday, March 7, 2007 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Richard Taylor, Susan Krumholz, Lise Gescheidt and Michael Fairhurst.

Also present were: Peter Ruggiero, Town Solicitor, Gareth Eames, Building Inspector and Sally Ferreira, Court Reporter.

1. An appeal has been filed by John and Eileen Moran, et al appealing a decision of the Building Official to issue a permit dated September 14, 2006 regarding 58 Riverside Drive, Tiverton being Block 07 Card 5 on Tiverton Tax Assessor's Maps and located in an R-40 district.

**DECISION:** Chairman David Collins, recused himself on this matter. Vice-Chairman Jay Jackson conducted this petition.

Vice-Chairman Jay Jackson opened the petition by stating this is the continuation of a matter the Board heard back in January. Attorney Kenneth Tremblay stated he is representing the Yacht Club. Vice-Chairman Jay Jackson made it known that Mr. Tremblay in the past represented him on certain legal matters, however, at this point there is nothing pending.

Attorney Joe Nicholson was present representing the appellants and stated he submitted a brief in this matter as requested at the January meeting. Mr. Ruggiero stated the board didn't close the public hearing and asked Mr. Nicholson if there was any further evidence and Mr. Nicholson replied in the negative.

Mr. Tremblay stated he did not see the brief even after he checked with the building official's office and it may be something he would like to read. Mr. Ruggiero asked Mr. Nicholson if he sent a copy to the Yacht Club and Mr. Nicholson stated he didn't know whether he did or not but he did submit it to everyone here through an e-mail as he was instructed to do by the building official's office.

Mr. Tremblay again stated he did not have a copy. Mr. Taylor stated he did not get one either. Mr. Tremblay represented to the board he did not have the opportunity to be present at the hearing in January but he reviewed the transcript. Mr. Nicholson voiced his concern that all the board members haven't looked at the brief or didn't receive it.

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Mr. Ruggiero stated since all the board members except Mr. Taylor do have a copy the option at this point would be to continue this matter to allow Mr. Taylor the opportunity to read the brief because the appellant was requested to present the brief and the board members agreed to review it as part of their consideration prior to deliberations.

Mr. Tremblay stated he would like the opportunity to respond if necessary. Mr. Nicholson stated if Mr. Tremblay is going to reply on something, then he would like to reply to his reply. Mr. Nicholson reminded the board this matter was on for hearing last month and Mr. Tremblay is now coming forward representing the Yacht Club.

Mr. Ruggiero advised the board that this is a review and the board is sitting in the shoes of the building official. Mr. Ruggiero stated as part of the board's deliberations, the decision was made to continue this matter for one month so the board could review any written documents and consider the decision in law and the statute in this case. And since Mr. Taylor did not have the opportunity to review the legal memo, Mr. Ruggiero urged the board to continue on that basis alone and make a decision next month.

Mr. Nicholson stated his objection to Mr. Tremblay's participation at this point in time due to the fact the Yacht Club showed up at the January meeting without an attorney and they had as much right as his client to submit their briefs on the deadline that the board imposed and they didn't. Mr. Tremblay responded by saying that statement is unfair because he personally checked on the 31st and wasn't supplied a copy of Mr. Nicholson's brief.

Ms. Krumholz stated her recollection was that there was a particular case that the board wanted to review more so than getting arguments from the lawyers in the form of a written brief. Ms. Gescheidt stated if everybody didn't read the material the board is not in a position to make an informed decision, then the board should continue this matter. Ms. Krumholz agreed.

Ms. Gescheidt stated she doesn't think anyone is prejudiced by continuing this matter to April to give Mr. Tremblay and Mr. Nicholson the opportunity to submit any materials needed so the board can read them in advance of the next meeting.

Ms. Gescheidt made a motion to allow Mr. Tremblay to file a very brief memo so the board can hear additional legal argument and suggested that a cut off date of at least fifteen days before the next time the board reconvenes. Mr. Tremblay agreed to submit a brief memo by next Wednesday because he is going on vacation. Mr. Ruggiero advised the board if they allow that, they also have to allow time for a reply as well. Mr. Taylor seconded the motion. The vote was unanimous. Voting were: Vice-Chairman Jay Jackson, Mr. Taylor, Ms. Krumholz and Ms. Gescheidt.

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2. A petition has been filed by John and Kelly Marks of 24 Highland Road, Tiverton, Rhode Island requesting a variance to Article V Section 1 and Article XIV Section 5d of the Tiverton Zoning Ordinance in order to construct an addition between the existing house and garage at 24 Highland Road, Tiverton, Rhode Island being Block 92 Card 26 on Tiverton Tax Assessor's Maps whereby expanding a legal non-conforming structure closer to the front yard setback than is currently allowed in a R40 zone.

**DECISION:** Chairman David Collins swore in the petitioner, John Marks. Mr. Marks represented to the board that he and his wife would like to connect the existing garage and house and they would like to add a family room to the house and enlarge the kitchen. It's an old house and unfortunately it doesn't conform to the present day code of side line dimensions for the addition.

Mr. Marks stated according to his interpretation of the zoning ordinance, because his home is on the corner lot, Daniel T. Church Road is considered his front yard therefore it's encroaching within his front yard dimensions. Mr. Jackson asked Mr. Marks how long this dwelling has been there and Mr. Marks responded as best he can determine the 1930's. Mr. Jackson stated Daniel T. Church Road wasn't there at that time and Mr. Marks responded in the affirmative.

Mr. Marks further clarified that the front of his property at one time was considered Highland Road, however, when Daniel T. Church Road was installed, per the zoning literature on a corner lot, the lot line that has the longest dimension is considered the front yard. Mr. Jackson stated it's preexisting with the front of the house facing Highland Road.

Mr. Taylor stated he doesn't see how this proposed addition is going to work because it barely touches on the point according to the submitted plans. Mr. Taylor further stated it looks like the proposed addition would actually have to be shifted a little bit over to the right to gain access. Mr. Marks replied that there is connection there and he doesn't have the finalized plans yet and he reminded Mr. Taylor the variance is not contingent upon exactly how he ends up with that connection.

Mr. Taylor stated that if Mr. Marks shifted the proposed building over to the right a little bit so that you can have a passageway through there, it would decrease the amount of variance and the relief that he needs. Mr. Marks stated he is limited in how he can shift the addition over because of the existing pool and the existing patio.

Ms. Gescheidt stated she assumed notice was given to all of the abutters to his property and Mr. Marks answered in the affirmative. Ms. Gescheidt also asked Mr. Marks if

anyone indicated an objection and Mr. Marks replied that he hasn't heard from anyone and assumed if somebody had a problem with this addition, they would be here tonight. The Chairman noted for the record there was no one in the audience to oppose this petition.

Ms. Gescheidt made a motion to grant the variance due to the fact this addition is not offensive and will not change the character of the neighborhood, that this is an old house built in 1930's with a kitchen that doesn't really adapt to modern life, that there is nothing that the petitioners have done to create this hardship and doesn't see how granting the variance is going to change the character of the area. Ms. Gescheidt further stated if the board doesn't grant the variance that the hardship that the petitioners are going to be suffering is going to be more than a mere inconvenience. Ms. Krumholz seconded. The vote was four in favor and one opposed. Voting in favor were: Chairman David Collins, Ms. Krumholz, Ms. Gescheidt and Mr. Jackson. Mr. Taylor was opposed.

#### **ADMINISTRATIVE ISSUES:**

The Chairman asked if everyone had the opportunity to review the minutes and the board members answered in the affirmative. Mr. Taylor stated he would like to make one comment. Mr. Taylor went on to say there were two petitions that the minutes really don't reflect why the board gave a continuance including one that he made the motion to continue. Mr. Taylor recommended that the board note the reason why a continuance is needed to keep the record clear.

The Chairman asked Mr. Taylor if he was willing to accept the minutes from last month as they are and Mr. Taylor answered in the affirmative. The Chairman entertained a motion to accept the minutes. Mr. Jackson so moved. Ms. Gescheidt stated she was not present at last month's meeting and could not vote. Ms. Krumholz seconded. The vote was unanimous with Ms. Gescheidt not voting. Voting were: Chairman David Collins, Mr. Taylor, Mr. Jackson, Ms. Krumholz and Mr. Fairhurst.

Mr. Ruggiero advised the board there was an article in the Lawyer's Weekly about a new trend reported in the Superior Court where the zoning boards are being overturned more often than previously. Mr. Ruggiero stated after some interviews and evaluations of the cases that were highlighted, it was essentially determined that the board on the cases that are being overturned are not doing a good fact finding job. Mr. Ruggiero also said the judges are complaining there's not enough facts in evidence to support the decisions.

Mr. Ruggiero informed the board the court does not receive a transcript that all they receive is a written decision in statement form. Mr. Ruggiero suggested that in the future this board state more information in their motions.

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Ms. Gescheidt made a request that the board receive the verbatim minutes of the Moran petition conducted at the January meeting by e-mail. Mr. Ruggiero stated he would contact Jodi and make that request known.

Mr. Jackson made a motion to adjourn. Mr. Taylor seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Fairhurst, Mr. Jackson, Mr. Taylor, Ms. Geschedit and Ms. Krumholz.

Whereupon the March 7, 2007 Zoning Board of Review meeting concluded at 8:12 p.m.

ZBR/ssf

C E R T I F I C A T E

I, Salvina S. Ferreira, Certified and Registered Professional Reporter,  
hereby certify that the foregoing 6 pages are transcribed to the best of my  
knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and  
affixed my seal of office this 21st day of March, 2007.

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Salvina S. Ferreira, CSR, RPR

My commission expires: September 26, 2009

LEDGEWOOD COURT REPORTING  
23 Last Street  
Tiverton, RI 02878  
(401) 625-5455